IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent of	Group Art Unit: 3992
Paul Anson BROWN	Examiner: Scott L. Weaver
U.S. Patent No.: 6,137,794 Issued: October 24, 2000 from Application Serial No.: 09/441,678	**DECLARATION OF PAUL A. BROWN PURSUANT 37 CFR §1.132**
Reexamination Application No.: 90/007,802 Reexamination Filing Date: November 9, 2005	

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Ex Parte Reexam, central Reexamination Unit, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on January 22, 2007.

By _____
Teri Nelmark

Mail Stop "Ex Parte Reexam"
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Sir:

Paul A. Brown, named inventor in the above-referenced patent application, hereby makes the following declaration under 37 C.F.R. § 1.132:

1. The '794 patent is embodied in an SP Controls, Inc. ("SPC") product called the SmartPanel. (Exhibit A.) This product is an audio-visual projector controller for placement, e.g., at a lectern or wall. The SmartPanel allows the user to select one of several input devices, e.g., DVD player, personal computer, and VCR, for display by a single projector. Thus, by the push of a button at a location remote from the projector, the user can easily switch between different devices for projection without having to change input wiring to the projector. The SmartPanel is sold to distributors and end users such as universities for use in lecture halls. SPC's Smart panel refers to a product family that includes models SP2-CHAS and SP2-SMCHAS. These products have the same functionality but different form factors.

2. SPC's SmartPanel product that is the subject of the '794 patent was not the first product to be sold in this market niche. In late 1996, I began development of a new product for

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this market to replace the format that was then extant in the marketplace. There were several "switcher" products in the marketplace that had illuminated keys that could be depressed to switch between various input devices to control the output to the projector. I perceived that for existing switcher products, the way in which the input devices were labeled on the control panel was not practical. For example, in the Extron System 8/10 Switcher products, and other switcher products on the market, there was a clear plastic keycap that fit over the depressible key which could be removed and a label inserted into the keycap ("ice cube keycap".) This placement of the input-device-identifying label on the selection key itself was undesirable because the label was obscured when the user placed her finger on the key. Furthermore, the space afforded by the keycap design was not sufficient to convey the text and font size needed for descriptive labels. To solve this problem, I created a design in which the input-device-identifying label is not placed on the key itself, but rather is offset so that it is adjacent to the key. In this design that is the subject of the '794 patent, the control panel has a frame with slots for placement of the labels. The slots are located above, and separate from the keys or buttons used to select input devices. Using an electronic light source inside the frame of the control panel, the labels are backlit so that the user can see the labels in a dimmed lecture hall. "Big buttons next to big labels" remains a major selling point of the product due to the distinct user-interface advantages.

3. SPC filed a patent application on its improved SmartPanel product in November 1997, just prior to its introduction to the market later that month. For approximately one year after the SmartPanel was introduced, SPC had an exclusive distributor relationship with Minnesota Western ("MW"). In 1999, SPC ended the exclusive distributorship relationship with MW because MW failed to meet the agreed sales levels. After SPC widened its distribution of SmartPanel, RGB introduced the 5cr product in June 1999 to compete against the SmartPanel. (Exhibit B.)

4. After about one year, RGB designed a new product to compete against the Smart Panel. In June 2001, at the INFOCOMM 2001 trade show, RGB announced a product, the MLC206, with a user interface configuration substantially the same as the SmartPanel. (See Exhibit C to compare the Smart Panel {Exhibit A} with the MLC206 front panel.) RGB had to believe that its look a like product would enable RGB to sell to accounts that had already bought SPC SmartPanels.

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5. The Smart Panel as introduced in 1997 (part number SP2-CHAS) was designed to use a 8x10x4 backbox. (Exhibit D.) This is noteworthy because this size box is non-standard for the industry. It was actually a mistake for SPC to have specified this form factor for the Smart Panel. At its 2001 introduction, RGB made the MLC206 available with the same non-standard form factor, 8x10x4 (Ex. D.) RGB's choice of this as a mounting option clearly shows their intent to copy the Smart Panel. To my knowledge, no other products in this industry have been designed to mate with an 8x10x4 box.

6. RGB created an array of accessories for the MLC206 that was item for item the same as SPC's array of accessories. Compare the product sheet for the Smart Panel with the MLC206 product sheet. (Exhibit E.)

7. RGB also created marketing literature for the MLC206 that was designed to look just like the Smart Panel marketing literature. (See Exhibit F.) It was unusual for RGB to select the same type face as SPC had been using to promote the Smart Panel. In Smart Panel product silk-screening, legends, and some documentation, SPC used the True Type Impact format. This font to my knowledge is not used by any other manufacturer in this industry. Indeed, this font choice has proven to be objectionable to many SPC customers, who feel that this particular font makes the product look "too industrial." When RGB introduced the MLC206, RGB used the exact same font, Impact, in its marketing documentation for the legends shown on the MLC206. RGB's use of this font in their marketing literature was clearly an attempt to make the MLC206 indistinguishable from the Smart Panel.

8. The SmartPanel illuminates its transparent legends from behind with electroluminescent backlights which are blue in appearance and have two distinct light levels: a brighter level which indicates which one of the four inputs is selected, and a darker level which provides a general backlight to the three non-selected inputs so that a user can read source legends in a dark room. All backlights are turned off (to full dark) when the projector is off.

9. Electroluminescent backlights are driven by integrated circuits that create an AC waveform at high voltages; these circuits are configured by choosing a capacitor value and a coil. At low frequencies, the light emitted by such backlights has a greenish tint; at higher frequencies, it shifts towards blue. The choice of the coil and frequencies to achieve desired color and light levels is up to the circuit designer.

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10. SP Controls chose to use EL drivers from Sipex, an IC manufacturer, and worked with an engineer at Sipex to determine the best combination of component values and chips to achieve the design goals of a clearly blue light and a target light-output of 11 foot/lamberts. The Sipex engineer recommended the SP4422 as the chip and a capacitor and coil value that would achieve the color that we wanted, but cautioned us that the frequencies that we had chosen were at the edge of the envelope for the IC's operating parameters. SP Controls chose to go ahead with the design as specified because we liked the color and output.

11. At the time of its introduction, the RGB MLC 206 also used EL lamps behind its transparent legends. The MLC 206 used two distinct levels of brightness, just as the SmartPanel did, to indicate current source selection.

12. Most notably, we find from the following that RGB unmistakably intended to copy the Smart Panel's look and feel of the Smart Panel: the MLC 206 used the Sipex SP4422 IC even though there were many other manufacturers of EL drivers. RGB designed to and used almost exactly the same blue color and brightness levels as the SmartPanel, even though it was at the edge of the IC's operating envelope.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18, U.S.C. and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 1/22/07

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